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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

NO. 657

PAUL M. BEDDOW,
Petitioner,

vs.

STATE OF ALABAMA
Respondent

BRIEF AND ARGUMENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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BRIEF AND ARGUMENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

BRIEF AND ARGUMENT FOR RESPONDENT

OPINION OF THE COURT BELOW

The opinion below entered upon December 4, 1956, and adhered to upon rehearing, is printed in an appendix to the petition for certiorari and petitioner's brief at page 51.

JURISDICTION

The petitioner has applied for a writ of certiorari from the Supreme Court of the United States to review the judgment of the Supreme Court of Alabama, rendered December 4, 1956, under the provisions of Title 28, Section 1257 (3), United States Code, Judiciary and Judicial Procedure. (See petitioner's brief, page 2.)

QUESTIONS PRESENTED

I.

Is any federal question presented for review by the decisions of the Alabama courts in this case?

II.

Did the introduction in evidence of two confessions made while petitioner was detained by the San Antonio police, when he was questioned intermittently without threats, promises or abuse, deny the petitioner due process of law guaranteed by the Fourteenth Amendment to the United States Constitution?

STATEMENT OF THE CASE

Petitioner, Paul M. Beddow, was indicted by the Grand Jury of Jefferson County for the offense of assault with intent to rob (R. p. 1). Petitioner's motion for change of venue (R. pp. 1-6) was overruled (R. p. 10). Petitioner also filed a motion to quash the indictment, (R. p. 6) which was overruled (R. p. 10). Petitioner's motion for a continuance (R. pp. 7 and 8) was granted (R. p. 10). The State's motion for a sanity hearing (R. p. 11) was granted (R. p. 12). Petitioner's second motion for a continuance (R. p. 2a) was overruled (R. p. 5a). Upon pleas of not guilty and not guilty by reason of insanity, trial was had and the jury returned a verdict of guilty (R. p. 12). The Court accordingly adjudged petitioner guilty and sentenced him to imprisonment for fifteen years (R. p. 12). From this judgment and sentence, an appeal was taken to the Alabama Court of Appeals which affirmed by opinion dated December 4, 1956. The Court of Appeals overruled the application for rehearing and a timely appli-

cation for writ of certiorari was denied by the Supreme Court of Alabama on April 25, 1957. Petitioner's application for a rehearing, made to the Supreme Court of Alabama, was overruled by that Court June 27, 1957.

STATEMENT OF THE FACTS

Upon October 23, 1953, at about 11:30 P.M., a masked man entered the automobile service station of Thomas Pierce, pointed a black pistol at Mr. Pierce, who was counting money at his desk, and said, "This is a stick-up. Give me your money" (R. p. 9a). Pierce grabbed the gun hand of the masked man and they commenced a struggle, during which Pierce was able to push the assailant through a window, twisting the gun so that it fell to the floor. The man fled on foot and climbed into a black convertible with a light or white top.

Other evidence confirming the account of the crime was also presented by the testimony of Henry Lucky (R. pp. 18a-22a), H. E. Wear (R. pp. 22a-28a), and J. H. Lakey (R. pp. 28a-33a).

Two confessions by the petitioner were introduced in evidence by the State. The first of these was a written statement made to John J. Pettino, a detective for the City of San Antonio, Texas, who testified at record pages 33a-42a. The statement confirming the details of the hold-up, as testified to by Mr. Pierce, appears at record pages 36a-38a. Pettino said that no one threatened Beddow, the petitioner, offered him any inducement or hope of reward to make the statement (R. p. 34a). The other confession was an oral one made to Lieutenant Glenn V. Evans and Captain Ben F. Walker of the Police Department of the City of

Birmingham, Alabama. Lieutenant Evans, who testified at record pages 57-65, said that Beddow made a statement to him at the police station in San Antonio, Texas where he questioned petitioner concerning the attempted robbery of Pierce's Service Station, and that no one at that time threatened Beddow, abused him, told him that it would be better to make a statement or held out inducements to him to make a statement concerning the attempted robbery (R. p. 58), and that Beddow made an oral statement to him admitting it (R. pp. 59-60). On cross-examination, Lt. Evans said that before the petitioner had made the statement, he, Evans, told him that if he came back and pleaded guilty, he would probably be eligible for probation and that he, Evans, would not oppose it. Captain Walker concurred in this statement (R. p. 63).

Other evidence presented at the trial concerning the defendant's good character, his fits of depression, and that of the two psychiatrists, Dr. Frank Kay and Dr. Wilmot S. Littlejohn, presented an issue for the jury on the question of insanity.

ARGUMENT

This case is one which we would be content to allow this Court to consider upon the petition and brief in support thereof, together with the opinion of the Court of Appeals, except that the Court might think that we did not oppose the granting of this petition or were guilty of treating the problems of judicial review too lightly.

Because the petition and record in this case present only one real question to this Court, namely whether the admission in evidence of the two confessions

was a violation of due process, we shall not discuss at length the denial of the motion for change of venue, the trial court's refusal to grant a further continuance, and the correctness of the trial judge's charge on the issue of insanity, all of which are peculiarly matters of state practice and procedure not reviewable by this Court.

It needs no more than a reading of the Court of Appeals' opinion to see that the motion for change of venue was not well taken. As was stated in that opinion, see petitioner's brief, pages 51 and 52, Jefferson County had a population of five hundred thousand or more and there were over forty thousand names in the jury box. The newspaper accounts of the crime were not inflamatory and the testimony on the defendant's behalf was neither strong nor convincing proof of the need for the change of venue. The Alabama cases dealing with change of venue. **Patton v. State,** 246 Ala. 639, 21 So. 2d 844 and **McLain v. State,** 182 Ala. 67, 62 So. 241, clearly state the Alabama procedural rule that change of venue is a matter in the discretion of the trial judge. This is a well accepted procedural principle which is followed almost universally in the United States.

The same may be said of the application for a continuance. We direct the Court's attention to **Clayton v. State,** 244 Ala. 10, 13 So. 2d 420 and **Wyatt v. State,** 35 Ala. App. 147, 46 So. 2d 837 as relatively recent statements of the Alabama rule on continuances, and point out further that the petitioner had already been granted a twenty-eight day continuance (R. pp. 7, 8 and 10).

The trial judge's oral charge on the quantum of proof necessary to sustain a plea of not guilty by reason

of insanity also fails to present a federal question. The rule in Alabama is that to preserve the record so as to present a question for appellate review of a trial judge's oral charge, the specific portion objected to must be substantially set forth in an exception thereto. This, counsel for the petitioner failed to do at the trial. Thus, under the rule of **Chandler v. State,** 12 Ala. App. 287, 68 So. 536 and **Meeks v. State,** 38 Ala. App. 172, 81 So. 2d 616, cert. denied 263 Ala. 112, 81 So. 2d 619, there was nothing for the Appellate Court to review. That this is an eminently sound rule is self-evident. Otherwise, the defendant is allowed to gamble upon the outcome of a trial without calling to the trial judge's attention any misstatements of the law contained in the charge to the jury.

This Court has held that all of the above questions are matters of state procedure not reviewable by it. **Barrington v. Missouri,** 205 U.S. 483.

Thus the questions are reduced to the single point of the voluntariness of petitioner's two confessions. That the guaranty of the Fifth Amendment to the Constitution of the United States that no person "shall be compelled in any criminal case to be a witness against himself," is not made effective against state action by the Fourteenth Amendment to the Constitution of the United States, is established law.

Twining v. New Jersey, 211 U.S. 78,

Palko v. Connecticut, 302 U.S. 319,

Adamson v. California, 332 U.S. 46,

Snyder v. Massachusetts, 291 U.S. 97,

Foster v. Illinois, 332 U.S. 134,

Therefore, we must see if the means by which Beddow was induced to confess his crime offend the civilized standards of the Anglo-American World.[1]

The petitioner was a high school graduate with service in World War II as a Marine. He had three to four years experience as a police officer (R. p. 71). The testimony of Captain Walker (R. pp. 66-67), on direct examination, and on cross-examination (R. pp. 71-74), fails to show that the questioning was for prolonged periods or at unusual times. In fact, the oral confession was made about two o'clock in the evening (R. p. 73). The only scintilla of evidence of a hope of reward or promise of leniency is found on record page 63. It does not appear that the discussion of probation was made in connection with the confessions, though it appears to have taken place before Beddow confessed. There was no promise of probation, nor promise of leniency. Rather, Lt. Evans said that he, with Captain Walker's concurrence, would not oppose probation.

While like Professor Field, we are uncertain of the location of the "plimsoll line of 'due process,'"[2] it is submitted that the circumstances surrounding the taking of the two confessions in the case at bar do not fall below that line, whether it be Lumber Winter North Atlantic or Tropical Fresh-water. There is in this case none of the humiliating treatment and furtive sequestration of **Malinski v. New York,** 324 U.S. 401. There was none of the relay questioning such as appeared in **Haley v. Ohio,** 332 U.S. 596, **Watts v. Indiana,** 338 U.S. 49, **Turner v. Pennsylvania,** 338 U.S. 62

[1] **Fikes v. Alabama,** 352 U.S. 191

[2] Frankfurter, J. Concurring, 71 Harv. Law Rev. 77.

and **Harris v. South Carolina,** 338 U.S. 68. Nor does the failure to speedily arraign the defendant enter into the consideration of this case since he was a fugitive in another state. The police officers had only a warrant for his arrest. The element of coercion, even psychological coercion, is totally lacking unless the moral ascendancy, which police officers dealing with detained felons almost always have, is alone held to be psychological coercion vitiating the use of a confession as a denial of due process. If this last remnant of the power of the police to question suspected criminals is taken from them, then law enforcement will be relegated to dependency upon remorse alone to compell criminals to seek to relieve the weight of their misdeeds by spontaneous or open court confessions. Reliance on such chancy means makes neither good sense nor good law.

CONCLUSION

For the foregoing reasons this petition for certiorari should be denied.

Respectfully submitted,

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Assistant Attorney General
of Alabama

CERTIFICATE OF SERVICE

I, Edmon L. Rinehart, one of the attorneys for the respondent, The State of Alabama, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 10th day of January 1958, I served copies of the foregoing brief in opposition on George Trawick, Empire Building, Birmingham, Alabama, J. Edmund Odum and John T. Batten, 319-22 Frank Nelson Bulding, Birmingham, Alabama, by placing a copy in a duly addressed envelope, with first class postage prepaid, in the United States Post Office at Montgomery, Alabama.

I further certify that this brief in opposition is presented in good faith and not for delay.

Edmon L. Rinehart

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